

JUL 27 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MICHAEL EDWARD SLATON,

Defendant - Appellant.

No. 08-10086

D.C. No. CR-06-00244-FCD

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of California
Frank C. Damrell, Jr., District Judge, Presiding

Submitted July 14, 2009^{**}

Before: SCHROEDER, THOMAS, and WARDLAW, Circuit Judges.

Michael Edward Slaton appeals from the 170-month sentence imposed following his guilty-plea conviction for possession with intent to distribute

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

cocaine base, in violation of 21 U.S.C. § 841(a)(1). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Slaton contends that his Sixth Amendment rights were violated when the district court applied a two-level enhancement for reckless endangerment during flight because the court relied on facts that Slaton did not admit to, and that were not found by a jury beyond a reasonable doubt. This contention fails because the enhancement did not result in a sentence above the applicable statutory range. *See Cunningham v. California*, 549 U.S. 270, 292 (2007) (citing *United States v. Booker*, 543 U.S. 220, 233 (2005)); *see also United States v. Dupas*, 419 F.3d 916, 919 (9th Cir. 2005) (recognizing that the Sentencing Guidelines regime allows the sentencing judge, as distinct from the jury, to make the findings of fact necessary to determine the Guidelines range).

AFFIRMED.